Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-436

FEDERAL COMMUNICATIONS COMMISSION,
Petitioner,

v.

MCI TELECOMMUNICATIONS CORPORATION, MICROWAVE COMMUNICATIONS, INC., and N-TRIPLE-C, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE TENNESSEE PUBLIC SERVICE COMMISSION

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Comes now Bob Clement, Chairman, Z. D. Atkins, Commissioner, and Frank D. Cochran, Commissioner, duly-elected Tennessee Public Service Commissioners, and respectfully move the

Court for leave to file the attached Brief Amicus Curiae in Support of the Petition for Writ of Certiorari in the above-captioned cause.

In support of this Motion, the TPSC would show:

That the Tennessee Public Service Commission is an agency of the State of Tennessee created in its present form by the Act of the Tennessee General Assembly in 1897. That it is the agency in the State of Tennessee with authority to regulate, supervise and control all public utilities, pursuant to the Public Acts of 1919. That it sets the rates, services and charges of all public utilities in this State, including the granting of franchises, certificates, etc. That its duties are to see that the ratepayers of this State receive the best and highest service possible for their rate dollar. That it is a member of the National Association of Regulatory Utility Commissioners, a quasi-governmental non-profit organization founded in 1889. That the TPSC hereby moves the Court for leave to file Amicus Curiae Brief in Support of the Amicus Curiae Brief of the National Association of Regulatory Utility Commissioners.

This case is before this Court on a Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals had before it a petition for review, initiated by MCI Telecommunications Corporation, Microwave Communications, Inc., and N-Triple-C, Inc. (MCI), of a decision of the Federal Communications Commission (FCC) holding that MCI had exceeded its authorization, limited to the offering of private line services, by providing a a service called "Execunet", which the FCC found was not a private line service at all but instead was the equivalent of message telephone service (ordinary long distance service). *MCI Telecommunications Corp. Investigation Into the Lawfulness of Tariff FCC No. 1 Insofar as It Purports to Offer Execunet Service*, 60 F.C.C. 2d 25 (1976). The FCC's decision with respect

to Execunet was predicated upon its earlier decision, *Specialized Common Carrier Services*, 29 F.C.C. 2d 870 (1971), in which it had articulated the findings and evidence in support of its conclusion that the entry of MCI and other specialized common carriers, limited to the offering of private line services, was in the public interest. That decision was affirmed by the Court of Appeals for the Ninth Circuit in a decision which this Court elected not to review further. *Washington Utilities & Transp. Comm'n. v. FCC*, 513 F. 2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975). In disregard of those decisions and the FCC's continued rearticulation and reapplication of its now settled policy determination limiting MCI and other specialized common carriers to the provision of private line services, the Court of Appeals below held that MCI, and presumably all other specialized common carriers, are not limited to the offering of private line services and can offer ordinary long distance service and any other services they choose between and among the states throughout the country.

The Tennessee Public Service Commission, like the NARUC, has an historic and vital interest in the disposition of the Petition for Writ of Certiorari now pending before this Court. The decision of the Court of Appeals, by improperly setting aside the FCC's determination that MCI was not and is not authorized to provide Execunet service and, thereby, for the first time permitting competition for message telephone service in addition to private line service, will have a direct and potentially staggering effect both upon regulatory policies developed over decades to promote the availability of local telephone service at reasonable rates and upon the rates for those services themselves.

This Court's disposition of this case will have a direct impact upon the ability of State regulatory commissions to discharge their responsibilities on behalf of the citizens within their respective borders. Accordingly, the TPSC submits that its participation in these proceedings is essential to insure the full and

adequate representation of the interests of the State of Tennessee.

Wherefore, it is respectfully requested that this Court grant leave for the filing of a brief by the Tennessee Public Service Commission, as amicus curiae, in this case.

Dated this 10th day of October, 1977.

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BRIEF FOR THE TENNESSEE PUBLIC SERVICE COMMISSION AMICUS CURIAE

The Tennessee Public Service Commission submits, as provided by Rule 42 of the Rules of this Court, the following brief amicus curiae in support of the Petition for Writ of Certiorari filed by the Federal Communications Commission.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit, dated July 28, 1977, is not reported. The opinion of the Federal Communications Commission is reported at 60 F.C.C. 2d 25 (1976).

QUESTION PRESENTED

This case presents questions vital to the Tennessee Public Service Commission and to the consumers throughout the State of Tennessee.

INTEREST OF AMICUS CURIAE

The interests of the Tennessee Public Service Commission as amicus curiae are set forth in the attached motion for leave to file this brief.

STATEMENT

The Tennessee Public Service Commission, being a member of the NARUC, does here and now adopt the statement heretofore filed by the NARUC amicus curiae on September 27, 1977.

REASONS FOR GRANTING THE WRIT

The Decision of the Court of Appeals Is in Conflict With the Decisions of This Court and the Court of Appeals Permitting Administrative Agencies to Utilize Rulemaking Proceedings to Establish Policies for Application in Subsequent Proceedings.

The Tennessee Public Service Commission hereby adopts pages 18-25 of the NARUC's Amicus Curiae Brief filed on September 27, 1977.

CONCLUSION

For the foregoing reasons, the Tennessee Public Service Commission respectfully requests that this Court grant the Petition for Writ of Certiorari and summarily reverse the Court of Appeals decision.

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October 10, 1977

Certificate of Service

I certify that I have served a copy of this Motion and Brief on the following parties:

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This 10th day of October, 1977.

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